

**Plaintiff
Jackie Fisher's**

**Response in Opposition
to Defendants'**

**Motion for
Summary
Judgment**

**EXHIBIT
40**



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[Table of
Contents](#)
[Official
Governance](#)
[General
Administrative](#)
[Employee
Related](#)
[Fiscal Related](#)
[Faculty Related](#)
[Compliance
Related](#)
[Student
Policies](#)
[Health, Safety
and Security](#)

Search the Employee Related policies:

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[Departmental
• Healthcare
Epidemiology
Policies](#)

List Results

Total: 59

Items: 1-25

[3-10-1](#)

[IHOP - 3-8-2 Employee Assistance Program](#)

[IHOP - 3-9-12 - Leave for Employees Certified as Firefighter, Emergency Medical Service, and](#)

[IHOP - 3.1.2 - Employee Files](#)

☒ [IHOP - 3.10.3 - Grievance Policy](#)

[IHOP - 3.11.1 - Workers Compensation Insurance](#)

[IHOP - 3.2.1 - Equal Employment Opportunity and Affirmative Action](#)

[IHOP - 3.2.2 - Americans with Disabilities Act Policy](#)

[IHOP - 3.2.3 - Nondiscrimination Policy](#)

[IHOP - 3.2.4 - Sexual Harassment and Misconduct](#)

[IHOP - 3.3.1 - Verification of Selective Service Registration](#)

[IHOP - 3.3.11 Eligibility for Re-employment Process](#)

[IHOP - 3.3.12 - Classified Vacancy Advertising](#)

[IHOP - 3.3.14 - Employment of Relatives \(Nepotism\)](#)

[IHOP - 3.3.16 - Dual State Employment](#)

[IHOP - 3.3.2 - Security Clearance for New Employees](#)

[IHOP - 3.3.3 - Processing Non-Citizen Employees and Students](#)

[IHOP - 3.3.4 - Eligibility and Tax Requirements](#)

[IHOP - 3.3.7 - Contract Workforce](#)

[IHOP - 3.3.8 - Faculty and Administrative & Professional Recruitment](#)

[IHOP - 3.3.9 - Classified Staff Recruitment and Transfer](#)

[IHOP - 3.4.11 - Shift Differential](#)

[IHOP - 3.4.13 - Longevity Pay](#)

[IHOP - 3.4.8 - Compensatory Time](#)

[IHOP - 3.5.1 - Sick Leave Pool](#)

[1](#) | [2](#) | [3](#) | [next](#)

[UTMB](#) | [Search](#) | [Directories](#) | [Toolbox](#) | [News](#) | [Employment](#) | [Sitemap](#)
[UT System](#) | [Reports to the State](#) | [Compact With Texans](#) | [Statewide Search](#)

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UTMB HANDBOOK OF OPERATING PROCEDURES

Section 3	Human Resources Policies	04/01/90 - Originated
Subject 3.10	Discipline and Discharge	09/01/04 - Reviewed w/ changes
		- Reviewed w/o changes
Policy 3.10.3	Grievance Policy	Office of Equal Opportunity and Diversity
		-Author

Grievance Policy**Audience**

This policy is available to any employee, including faculty, as a means to present a complaint related to wages, hours of work, working conditions, merit raise, job assignments, performance evaluation, unlawful discrimination, reprimand, or the interpretation or application of a rule, regulation or policy.

- A probationary, temporary or hourly employee which alleges that his or her **termination** from employment was based on **unlawful discrimination** and who is restricted from using the appeal procedures for Employee Dismissals may use this policy to pursue that complaint.

Exclusions

Faculty issues regarding actions or decisions by the administration that are reviewable under separate procedures provided for in the institution's Handbook of Operating Procedures, the Rules and Regulations of the University of Texas System Board of Regents, or other approved policies or procedures of the University or the University of Texas System, including faculty issues involving appointment, promotion, or tenure.

University Police Officers, except as noted under the Audience section.

General Information

The staff of the Office of Equal Opportunity and Diversity (OEO&D) may assist the employee by clarifying the issue(s) and providing information on dispute resolution procedures.

It is not required to have three levels to the grievance process when the organizational reporting structure does not provide three management levels to consider the grievance.

- No employee will be penalized, disciplined, or prejudiced for exercising the right to make a complaint, or for aiding another employee in the presentation of that complaint.
- No remedy or corrective action is available under the grievance policy once an individual ceases to be a UTMB

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**General
Information
(cont'd)**

employee.

Either the employee or management may request a face to face meeting at any level. Meetings are encouraged, but not required.

Time Limits

The time limits set forth in the grievance procedure must be adhered to by both the employee and the appropriate supervisory and administrative personnel unless extended for good cause by the OEO&D director. Where time limits are indicated in this policy, "day one" will be the next working day. The failure of an employee to process the grievance in a timely manner to the next level shall constitute a withdrawal of the grievance. The failure of supervisory or administrative personnel to respond in a timely manner to a grievance shall constitute authorization for the employee to process the grievance to the next level.

Extensions

A request for an extension of time for a response may be made by either the employee or the appropriate administrative official in person, by telephone, or in writing (including email) to the OEO&D. The OEO&D will contact the employee or the appropriate administrative official, to obtain a mutual agreement to the extension of time and will prepare an agreement form, stating the date of the new time limit and provide a copy of the form to the employee and the appropriate official. If an agreement is not reached, the OEO&D shall make the decision regarding whether to grant an extension.

**Verbal
Presentation**

The **employee** shall verbally present the complaint to his or her **supervisor** for discussion, consideration, and resolution **within five working days** from the date of the action which is the subject of the complaint.

Note: If the supervisor is the subject of the complaint, the **employee** may address the complaint to the **appropriate department head or administrative equivalent**.

- The **immediate supervisor** (or the appropriate department head, if the supervisor is the subject of the complaint) shall discuss the issue with the **employee**, consider the merits of the complaint and respond to the employee **within five working days**.
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Verbal

- If the complaint is not satisfactorily resolved by the immediate supervisor, (or the appropriate department head, if the supervisor is
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UTMB HANDBOOK OF OPERATING PROCEDURES

Section 3	Human Resources Policies	04/01/90 - Originated
Subject 3.10	Discipline and Discharge	09/01/04 - Reviewed w/ changes
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**Presentation,
continued**

the subject of the complaint) the employee should contact the OEO&D if the employee elects to file a written grievance.

Mediation

Mediation is one of several alternative dispute resolution (ADR) processes. Mediation is a voluntary, neutral, assisted negotiation process designed to resolve the problem(s) or issue(s) between two or more parties. Mediation allows for more informal problem solving between parties directly involved in the dispute. The University has established the UTMB Mediation Service, a collaborative effort of several departments. Issues which are eligible for possible resolution through mediation are those which are related to the organizational functions of the University.

Some issues may require referral to offices or departments which have existing dispute resolution policies and procedures. Each person who is assigned to mediate a dispute has completed training which meets the standards of the Texas Alternative Dispute Resolution Act and the Texas Mediation Trainer Roundtable.

Any employee who contacts the OEO&D to initiate a written grievance will be advised of the opportunity to address the issue which is the subject of the dispute through mediation. The employee will be expected to:

- provide a written statement describing the issue(s)
- identify any alleged violation of the application of a policy or procedure
- state the desired outcome requested of management

If the **employee** voluntarily elects to address the dispute through the UTMB Mediation Service and the party with whom the employee has the dispute agrees to participate in mediation, the written grievance will **NOT** be presented to the first level of management. A mediation meeting will be scheduled to occur within 10 work days of the filing date identified on the grievance form. If the other party declines to participate in mediation, the written grievance will be presented to the first level of management.

If both parties agree to participate in mediation and subsequently

UTMB HANDBOOK OF OPERATING PROCEDURES

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Subject 3.10	Discipline and Discharge	09/01/04 - Reviewed w/ changes
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**Mediation
(cont'd)**

participate in a mediation meeting through the UTMB Mediation Service, the **employee** who signed the grievance form will have five (5) working days after the conclusion of the mediation meeting to decide if the issue(s) should then be presented to the first level of management. A mediator will not discuss the issue(s) raised in a mediation meeting with any level of management. The UTMB Mediation Service will confirm an inquiry from the level of management considering a grievance as to whether a mediation meeting was held to address the dispute which is the basis for the grievance.

A dispute addressed in a grievance is eligible for referral to the UTMB Mediation Service only once during the consideration of the dispute.

A dispute involving an employee who alleges unlawful discrimination as part of a written grievance, may be referred to the UTMB Mediation Service by the director of OEO&D.

**General
Grievance
First Level**

- If the **employee** elects to proceed with a written grievance, assistance will be provided by the OEO&D in preparing the appropriate form (AAO-2), which identifies the appropriate levels of management in the review process. The written grievance must be submitted by the **employee, within five (5) working days** of the date of the supervisor's response, to the **appropriate department head or administrative equivalent** for consideration and action.
- The **departmental** personnel file may be reviewed by the first level official. A written decision (form HR-61), from the **appropriate department head or administrative equivalent**, will be mailed to the employee **within five (5) working days** of receipt of the grievance. A copy of the written decision is sent to the employee's supervisor and a copy is sent to the OEO&D. The grievance form and attachments are retained at the department head or administrative equivalent level, pending a possible response from the employee.

UTMB HANDBOOK OF OPERATING PROCEDURES

Section 3	Human Resources Policies	04/01/90 - Originated
Subject 3.10	Discipline and Discharge	09/01/04 - Reviewed w/ changes
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Policy 3.10.3	Grievance Policy	Office of Equal Opportunity and Diversity
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**General
Grievance
Second Level**

- If the **employee** is not satisfied with the decision of the department head or administrative equivalent, a written response stating why the decision is unacceptable must be prepared by the **employee within five (5) working days** of receipt of the first level decision and submitted to the department head or administrative equivalent requesting that the grievance and attachments be forwarded **within two (2) working days** to the second level in the review process
- The second level official may review the **departmental** personnel file. **Within ten (10) working days** of receipt of the grievance, the **second level respondent** will mail a written decision (form HR-61) to the employee, with a copy to the first level respondent and a copy to the OEO&D. The grievance form and attachments are retained at the second level, pending a possible response from the employee.

**General
Grievance
Third Level**

- If the **employee** is not satisfied with the decision of the second level respondent, a written response stating why the decision is unacceptable must be prepared by the **employee within five (5) working days** of receipt of the second level decision and submitted to the **second level respondent**, requesting that the grievance and attachments be forwarded **within two (2) working days** to the appropriate third level official.
- The third level official may review the **departmental** personnel file. **Within a reasonable time, not to exceed thirty calendar days** following receipt of the grievance, the **third level official** must reach a decision on the grievance and a written decision shall be mailed to the employee with a copy to the first and second level officials and a copy to the OEO&D. **This decision is final.**
- After the final level decision or if the employee drops the grievance at any level, the written grievance and all decisions or responses regarding the complaint shall be forwarded to Human Resources, Division of Employee Relations.

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**Discrimination
Issues**

Any employee alleging discrimination based on race, color, age, sex, national origin, sexual harassment or sexual misconduct, Vietnam era veteran's status, sexual orientation or disability shall use the procedure described herein, in filing a complaint. The Director of OEO&D is the designated coordinator for applicable Federal and State civil rights laws and regulations including, but not limited to, Title VII of the Civil Rights Act and the Americans with Disabilities Act, ADA.

**Verbal
Presentation**

When a complaint contains an allegation of unlawful discrimination, sexual harassment and sexual misconduct are forms of discrimination; the **employee** is encouraged to present the complaint to his or her **immediate supervisor within ten (10) calendar days** from the date of the alleged discrimination. Isolated incidents of harassment generally do not violate university policies, a pattern of such incidents may violate policy, therefore, employees are encouraged to report such behaviors before they become severe or pervasive.

Note: If the supervisor is the subject of the complaint, the employee may address the complaint to the appropriate department head or administrative equivalent or the OEO&D..

- ☐ The **immediate supervisor** (or the appropriate department head, if the supervisor is the subject of the complaint) shall refer the employee to OEO&D or notify OEO&D of the employee's concerns.
- ☐ If the complaint is not satisfactorily resolved by the immediate supervisor, (or the appropriate department head, if the supervisor is the subject of the complaint) the employee should contact the OEO&D if the employee elects to file a written grievance.

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Discrimination**Grievance**

- ☐ If after consultation with OEO&D the employee elects to proceed with a written grievance, assistance will be provided in preparing the necessary grievance form.

First Level

- ☐ The OEO&D shall investigate the allegations(s) of discrimination.
- ☐ The investigation shall be completed as quickly as feasibly possible but within three months from receipt.
- ☐ The OEO&D, in consultation with Legal Affairs, will make recommendations to the department based on the findings of the investigation
- ☐ The department head or administrative equivalent will consider the recommendations and contact the complainant and the accused to inform each of the course of action to be taken.

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**Matrix for
Grievance
Process**

Should there be questions concerning the appropriate level official, call the OEO&D for clarification.

VERBAL PRESENTATION

A. The grievance is verbally presented to the supervisor within 5 working days from the date of the action which is the subject of the complaint.

B. The supervisor has five (5) working days following the discussion to respond verbally or in writing to the employee.

LEVEL I

A. If not satisfied, the employee has five (5) working days following the supervisor's response to submit a written grievance on OEO&D Form AAO-2 to the next level of management as identified by OEO&D. B. A response written response must be returned in five (5) working on form HR-61 to the employee.

C. If not satisfied, the employee has five (5) working days following receipt of the response, to request in writing, to that the Level I response forward the grievance to Level II

LEVEL II

A. The grievance is considered by the next appropriate management level as identified by OEO&D..

B. The Level II respondent has ten (10) working days to respond in writing on form HR-61 to the employee.

C. If not satisfied, the employee has five (5) working days following the response to request that the Level II respondent forward the grievance to Level III.

LEVEL III

A. The grievance is considered by the next appropriate management level as identified by OEO&D.

B. The Level III respondent has 30 calendar days to respond in writing on form HR-61 to the employee.

C. THIS DECISION IS FINAL.